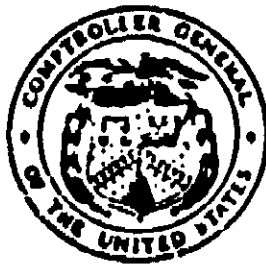


**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*Reed*  
22464  
118927

**FILE:** B-206238

**DATE:** July 13, 1982

**MATTER OF:** William D. Corker, Jr.

**DIGEST:** A Regular enlisted member of the Air Force with less than 20 years of active service was retired for disability which was not a result of armed conflict nor an instrumentality of war during a period of war. His use of active service to establish a service computation date upon subsequent Government employment is different for various purposes. For preference eligibility all may be counted since active service was for less than 20 years. For leave accrual only wartime service and service in a campaign may be counted since disability was not a result of armed conflict nor an instrumentality of war. For Civil Service retirement service time may be counted only if he waives receipt of military retired pay at the time of civilian retirement, since disability was not a result of combat nor due to instrumentality of war.

This action is in response to a letter from Mr. William D. Corker, Jr., requesting further consideration of his claim to be entitled to have his service computation date for Federal civilian employment established as January 29, 1949, for preference eligibility for employment retention purposes, annual leave accrual and retirement annuity purposes.

This claim was the subject of a determination by the Claims Group, Accounting and Financial Management Division, dated November 12, 1981, which concluded that the agency action in his case, establishing different service computation dates for different purposes, was correct. For the reasons stated below, that determination is sustained.

Mr. Corker was retired from the Air Force as a Regular enlisted member on December 22, 1964, for service incurred disability, having served a total of 16 years, 10 months and 21 days of active military service. The form

□ 1111

022706

B-206238

"Proceedings and Findings of USAF Physical Evaluation Board," (AF Form 356) prepared in his case, recognized that his service incurred disability was in line of duty and not due to own misconduct. However, it was specifically noted that his disability was not as a direct result of armed conflict, nor was it caused by an instrumentality of war during a period of war. No evidence has been presented which would in any way contradict those findings.

On December 20, 1965, Mr. Corker was employed by the District of Columbia. His service computation date was established as January 29, 1949, for military preference for reduction-in-force retention purposes under 5 U.S.C. 3502, and for years of service for annual leave accrual purposes under 5 U.S.C. 6303. In 1977, his employing office, then the Department of the Army, determined that his service computation date while apparently valid for employment retention purposes, was not proper for leave credit purposes under 5 U.S.C. 6303. They determined that his service computation date for leave accrual purposes should have been November 26, 1960. On correction and adjustment of the rate of leave accrual, it was determined that he had been over credited a total of 132 hours. Since his leave balance was greater than that amount the agency simply reduced his leave balance to account for the excess credit.

Mr. Corker contends that he is entitled to use the January 29, 1949 date for all purposes because he was retired for disability as a Regular enlisted member of the Armed Forces.

The fact that a service member may have been in a Regular enlisted status at the time of retirement is not a determining factor in establishing preference eligibility under 5 U.S.C. 3502, or annual leave accrual under 5 U.S.C. 6303.

Regarding employee retention preference in the event of a reduction in force, 5 U.S.C. 3502(a)(B) provides that an employee who is a "retired member of a uniformed service" is

entitled to be credited with all of his active service time if he qualifies as a preference eligible employee under 5 U.S.C. 3501(a)(3)(A), (B), or (C). Under those provisions, the preference eligibility of a "retired member of a uniformed service" is established if (A) his retirement was for disability resulting from injury or disease received in line of duty as a direct result of armed conflict, or was caused by an instrumentality of war incurred in line of duty during a period of war; (B) his full-time active service was less than twenty years; or (C) he was employed by the Government on November 30, 1964, and was continuously so employed thereafter.

Thus, for the purpose of employment retention preference under 5 U.S.C. 3502, Mr. Corker qualifies as a preference eligible employee under 5 U.S.C. 3501(a)(3)(B) since he was retired for disability with less than 20 years' service. Credit for all of his active service of 16 years, 10 months and 21 days, when added to the effective date of his initial appointment (December 20, 1965), provided him with a service computation date of January 29, 1949, for retention preference purposes.

Regarding crediting of military service for annual leave accrual purposes, 5 U.S.C. 6303(a)(A) provides, in part, that an employee who is a "retired member of a uniformed service" is entitled to credit for all his active military service if his retirement was for disability resulting from injury or disease received in line of duty as a direct result of armed conflict, or from an instrumentality of war incurred in line of duty, during a period of war. If a member was not retired for those reasons, subsection 6303(a)(B) provides that he may only be credited with that service performed during war or in a campaign or expedition for which a campaign badge had been authorized.

Since Mr. Corker's disability was not as a direct result of armed conflict, nor was it caused by an instrumentality of war during a period of war, he could not use all of his active service for years of service under

B-206238

5 U.S.C. 6303. The only military service which he could use for this purpose would be that service recognized under 5 U.S.C. 6303(a)(B). According to the file, that service totaled 5 years and 24 days, which when added to the effective date of his initial appointment (December 20, 1965, resulted in a service computation date of November 26, 1960, for annual leave accrual purposes.

Based on the information provided we find no basis for questioning the actions administratively taken in 1977 to change Mr. Corker's annual leave accrual service computation date and recover the overcredit of leave by reducing his leave balance.

In addition, Mr. Corker has also raised the question as to whether he is entitled to use his active military service time for civil service retirement annuity computation purposes.

Section 8332 of title 5, United States Code, which prescribes the total years of service which employees may use for civil service retirement purposes provides, in part, in subsection (c) that,

"(c) \* \* \* an employee \* \* \* shall be allowed credit for periods of military service before the date of the separation on which title to annuity is based. However, if an employee \* \* \* is awarded retired pay on account of military service, his military service may not be credited unless the retired pay is awarded--

"(1) on account of a service-connected disability--

"(A) incurred in combat with an enemy of the United States; or

B-206238

"(B) caused by an instrumentality  
of war during a period of war \* \* \* or

"(2) under chapter 67 of title 10."  
(Emphasis supplied.)

Under those provisions since Mr. Corker is not receiving military retired pay for any reason specified in subsections 8332(c)(1) or (2), he may not receive credit for that military service and continue to receive retired pay. In this connection, subsection 831.301(b) of title 5, Code of Federal Regulations (1981), provides that if an applicant for a civil service retirement annuity is receiving military retired pay which would not allow credit for that military service toward civil service retirement, the employee may elect to waive receipt of his military retired pay at the time of his civil service retirement so that his military service time may be credited.

Thus, Mr. Corker, at the time he retires from the civil service may count his military service time for civil service retirement purposes only if he waives receipt of military retired pay. He is not entitled to credit his military service time for both military and civil service retirement.

*Wilton J. Fowler*  
for Comptroller General  
of the United States